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Annual report of the Special Rapporteur on the right to education, Katarina Tomaševski, submitted pursuant to Commission on Human Rights resolution 2001/29

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Executive summary

The Commission on Human Rights, in its resolution 2001/29, renewed the Special Rapporteur's mandate for three years and outlined its contours. The Commission's emphasis on the evolving global education strategy has prompted the Special Rapporteur to prioritize human rights mainstreaming. Its key prerequisite is broadening the rule of law to encompass macroeconomic and education strategies, and its priority to eliminate obstacles, especially financial obstacles. Positive developments include increasing commitments to free primary education and their reinforcement by the allocation of funds freed through debt relief. Reaffirmation of the right to education remains necessary to counter continuously decreasing aid flows and the risk that progressive liberalization of trade in education will undermine progressive realization of the right to education.

The Special Rapporteur has continued translating basic human rights requirements into guidance for education. Creation of rights-based indicators has followed from her 4-A scheme for structuring governmental human rights obligations, and represents her contribution to the current emphasis on monitoring and accountability in education strategies.

The crucial importance of the practice of States for global policy-making has been underscored by the Commission's enumeration of key dimensions of the right to education. The Special Rapporteur has initiated all-encompassing gathering of information so as to ascertain the nature and scope of the right to education in States' practice. She has developed analytical guideposts for monitoring the progressive realization of the right to education, undertaken research and analysis, and will carry out this process through correspondence with Governments. The identification of *all* categories and individuals deprived of the full enjoyment of the right to education has necessitated combining the conventional legal approach with an emphasis on economic exclusion, which is especially important at a time of economic recession.

The application of human rights law throughout the process of education has been elevated within her priorities because of increasing numbers of alleged denials and violations brought to the attention of the United Nations. She has continued working with other special rapporteurs and cooperating with treaty bodies so as to facilitate the process of clarifying the nature and scope of the right to education.

The human rights perspective enables the linking of education with work, employment and self-employment, as well as with suppression of terrorism and prevention of violence. The indivisibility and interrelatedness of human rights is particularly useful for overcoming sectoral, professional and disciplinary fragmentation, as well as operationalizing rights-based development.

Introduction

1. Recent years have been characterized by a surge of interest in economic and social rights. This welcome change promises to redress their previous marginalization and enhance their visibility, contributing to a key objective for the Commission's thematic mechanisms in economic and social rights. Expansion of jurisprudence on the right to education at the domestic and international levels has been supplemented by the work of national human rights institutions. In international cooperation, the shift to rights-based development is uniting fragmented sectoral approaches within the integrated conceptual framework which the human rights approach entails. This facilitates cross-sectoral linkages whereby education can be adapted to the goals of poverty eradication, gender equality or prevention of terrorism and violence.

2. These developments have generated increasing demands for the Special Rapporteur's contributions to a myriad of meetings and projects relevant to the right to education. Her ability to contribute to ongoing developments has recently improved although there was inadequate servicing by the Office of the High Commissioner for Human Rights between March and September 2001. The Special Rapporteur apologizes to all those who did not receive responses to their correspondence, and to those whose concerns have not been immediately investigated. The Office of the High Commissioner for Human Rights has now been able to secure full-time professional support for the mandate on the right to education as of September 2001, and all overdue work is likely to be finalized by the fifty-eighth session of the Commission.

3. The Commission on Human Rights, in its resolution 2001/29, renewed the Special Rapporteur's mandate for three years. Its emphasis on the evolving global education strategy has prompted the Special Rapporteur to prioritize human rights mainstreaming. She has continued building bridges between the worlds of education, macroeconomics and human rights by operationalizing basic human rights requirements into rights-based indicators.

4. The crucial importance of the practice of States for global policy-making has been underscored by the Commission's enumeration of key dimensions of the right to education. The Special Rapporteur has initiated all-encompassing gathering of information so as to ascertain the nature and scope of the right to education in States' practice, and continued her practice of carrying out visits to countries whose experiences provide important insights. From 24 September to 10 October 2001, in the immediate aftermath of 11 September, she carried out a mission to the United States of America, her report on which is before the Commission in document E/CN.4/2002/60/Add.1. Also, she planned to carry out a mission to Turkey in December 2001 but the Government requested that her visit be delayed to 2002 and she hopes that it will take place at the beginning of February 2002.

I. SUBSUMING MACROECONOMIC AND EDUCATION STRATEGIES UNDER THE RULE OF LAW

5. The commitment to mainstreaming human rights in international cooperation has cleared the way towards rights-based development. Moreover, the grounding of human rights in the rule of law facilitates improving the governance of education. Since governance is commonly defined as the exercise of power, it ought to be subject to the rule of law so as to prevent its arbitrary use. Human rights safeguards complement stability, predictability and the elimination

of arbitrariness, which have been singled out as preconditions for economic development.[1] There is hence a challenge for the human rights community to clearly and comprehensively translate basic human rights standards into a language which economists, development or educational personnel can easily understand and apply. Gunnar Myrdal pointed out in 1970 the need to supplement economic policy-making with data on those to whom it refers: "Place an economist in the capital city of any underdeveloped country and give him the necessary assistance and he will in no time make a plan ... No sociologist, psychologist or anthropologist would ever think of doing such a thing."[2]

6. A commitment to specified ends without a corresponding commitment to the means necessary to attain them leaves the ends unattained. Willing the ends entails an obligation to will the means too. The goal of securing education for all children was not attained by the year 1980 or 2000. Concerns that the year 2015 may record yet another failure can best be alleviated by specifying the responsibilities for undertaking specific actions and envisaging remedial measures. A new model for the forging of global education strategy developed at Jomtien in 1990 and Dakar in 2000 is characterized by the leadership of international agencies. The heads of the lead agencies, UNESCO, the World Bank, UNICEF, UNDP and UNFPA have recently pointed to the need "to build leadership and mobilize resources for education",[3] thus identifying difficulties in applying the habitual State-centred approach to the changed global governance in education. The Dakar Framework for Action has emphasized that individual Governments are primarily responsible for achieving and sustaining free, all-encompassing and compulsory primary education, as well as pointing out that action should be primarily domestic. It has added that global coordination should be galvanized by UNESCO through a High-Level Group as "an opportunity to hold the global community to account for commitments made in Dakar".[4]

7. Accountability has become a key demand in international cooperation. The human rights approach prioritizes law in holding Governments accountable for their pledges, individually and collectively. Once a pledge becomes a human rights obligation, failures to attain the agreed ends by the specified means become denials and violations of human rights which Governments, individually and collectively, have to redress by compensating the victims and ensuring that they do not happen again.

8. Recent global initiatives to impart a higher priority to education such as the Dakar Framework for Action and the United Nations Millennium Declaration, or the forthcoming General Assembly Special Session for Children, highlight the importance of the human rights input (E/CN.4/1999/49, paras. 12-19). The *2001 Monitoring Report on Education for All* has indeed singled out key human rights dimensions: "Though universal primary enrolment remains the principal means of ensuring basic education for all, it is limited to those in the appropriate age group, those for whom schools are accessible and, in many cases, those who can afford the costs of schooling."[5]

9. Age provides an excellent example of the need to examine educational strategies and related statistics through the human rights lens. International human rights law posits that everybody has the right to education. If education is defined as an age-specific right for children aged 6-11, over-aged children may be precluded from access to school.[6] The Constitutional Court of South Africa recently addressed allegations of unfair discrimination against children

aged six, who had been denied access to primary school for which the age was set at seven: "The contention was that the discrimination was unfair and against the bes' interests of the child because the requirement allowed for no exemptions for children who did not reach seven during the year, even if they were manifestly ready for school. The initial focus on exemptions resulted in affidavits dealing extensively with the validity of school-readiness tests in a multicultural society, the main disagreement between the respective experts being whether reliable and objective tests could at present be employed in South Africa."[7]

10. The best interests of each child, singled out in the Convention on the Rights of the Child, collide with administrative categorizations based on statistical averages. If the right to education is limited to primary and/or the first stage of basic education only for children in a determined age range, adolescents and adults, or younger children, may be precluded from claiming their right to education. Ambitions to recognize lifelong learning as a right would then move in counterpoint to the effectively recognized right to education.

A. Renewed commitments to free primary education

11. When the core global human rights standards mandating primary education to be free and compulsory were adopted, there was full global consensus behind them. Enrolments rapidly expanded in the 1960s and the 1970s, to then halt owing to economic crises and diminished public funding.[8] Decreased fiscal allocations for education in the North, before these spread to the South, resulted in decreased primary-school enrolments.[9] The initial consensus was ruptured in the 1980s as consecutive economic crises led to a redefinition of the role of the State in education. The 1980s marked continued decreases of public funding for education begun in the 1970s, accompanied by the introduction of school fees in primary education (E/CN.4/2000/6, para. 48). Treating allocations for education as discretionary facilitated reductions of public expenditure, calls for privatization of education were justified by expected budgetary savings. Vito Tanzi of the International Monetary Fund and Ludger Schuknecht of the European Central Bank have warned, however, that "budgetary savings from more private sector involvement in education are likely to be small".[10]

12. A consequence of the economic crises and diminished public funding of education was "the exclusion of poorer students from education and partial return to educational patterns that perpetuate social inequalities".[11] Another consequence was a rupture between the duty of parents to educate their children and their inability to afford the cost of schooling. In many countries, laws on compulsory education require parents to ensure school attendance of their children. These laws were written under the assumption that compulsory schooling would be free of charge, and they cannot be enforced when parents cannot afford the cost of education (fees, uniforms, books, transportation or school meals). Bringing parents to court for breaches of the compulsory-education requirement and imposing fines does not address the underlying problem. Parents cannot afford to pay the fines just as they could not afford the school fees in the first place. Solving the underlying problem necessitates moving upwards, to resource allocation at the local, national and global levels, as well as outwards so as to integrate human rights in fiscal and economic policies.

13. Commitments to free primary education have become part and parcel of global strategies at the turn of the millennium, creating hope that previous retrogression can now be reversed. At the domestic level, Malawi led the way in 1994 (E/CN.4/2000/6, para. 48) and Uganda followed in 1997 (E/CN.4/2000/6/Add.1). Commitments made by Cameroon, the Gambia, Kenya, Lesotho, Nigeria, Tanzania and Zambia at the turn of the millennium have reinforced this trend. On 28 November 2001, the Parliament of India (Lok Sabha) adopted a 93rd constitutional amendment making education a fundamental right. These commitments require that international creditors and donors translate their words into deeds. Also, they necessitate domestic safeguards to ensure that funds earmarked for education reach their intended destination and that school fees are not continued under a different guise. The Special Rapporteur is particularly encouraged by the forthcoming Global Week of Action, from 21 to 27 April 2002, organized by the Global Campaign for Education and dedicated to the right to free education. It promises to serve as a catalyst for the abolition of all fees and charges in basic education.

B. Continuing dialogue with the World Bank

14. The Special Rapporteur has consistently emphasized the necessity of overcoming discord in global policies, whereby the human rights priority for education in fiscal allocations is thwarted by shifting the cost of education to individuals, families and communities. The outcomes of her dialogue with the World Bank were summarized for the Commission's fifty-seventh session (E/CN.4/2001/52, paras. 31-41) and dialogue has continued.

15. School fees, the Special Rapporteur's most urgent concern (E/CN.4/1999/49, paras. 32-41, E/CN.4/2000/6, paras. 45-55, E/CN.4/2001/52, para. 39), have apparently been subject to reconsideration within the World Bank with, as yet, an unpredictable outcome. Just after the Commission's fifty-seventh session, on 23-24 April 2001, while participating with representatives of the World Bank in a seminar on the elimination of user fees,[12] the Special Rapporteur was given an undated and unsigned statement of the World Bank on its commitment not to promote fees in primary education. In September 2001, another non-binding - this time public - statement announced that the World Bank "opposes user fees for primary education". The accompanying explanation was qualified by opposition to user fees for poor people, which may mean that fees should continue for people who may be classified as not poor (or not poor enough) by the Bank's criteria, in defiance of international legal obligations that require primary education to be free. The text continued: "Where Governments do levy user fees, the Bank helps Governments to reduce the burden on poor people by recommending, and providing finance for, targeted subsidies." This may continue parallel administrations, one collecting fees for primary education, another handling subsidies. These tend to be much more expensive than the fees and subsidies are worth. Another concern is an apparent Bank endorsement of the charging of school fees by local communities.[13] This is often necessitated by the inability of the central government to fund schools, resulting in "informal charges to parents and other fund-raising initiatives at the school level in supplementing public funding".[14]

16. The Special Rapporteur's key recommendation to the World Bank was "an in-house review to identify where school fees in primary education are being charged" (E/CN.4/2001/52, para. 81). She has been promised results of this review in December 2001 and will report to the Commission at its fifty-eighth session. A recent initiative by the United States which calls for

increased funding for education, including replacement of loans by grants, is also a signpost of change, which the Special Rapporteur is closely following. She is planning to pay another visit to the World Bank at the beginning of March 2002 so as to be able to provide the Commission with a full and up-to-date oral report.

C. Debt relief and aid for education

17. Alleviation of unsustainable debt burdens and increased international funding for education (E/CN.4/2001/52, para. 51) are key to reversing retrogression regarding the right to education, especially in Africa and Central Asia. The Special Rapporteur deems that mainstreaming necessitates integration of international human rights obligations in the intergovernmental process of negotiating debt relief. Three parallel global processes - debt relief, Education for All (EFA) and human rights reporting - could be linked and, eventually, merged:

(i) The creation and approval of poverty reduction strategy papers (PRSPs) does not, as yet, include references to international legal obligations of the States qualifying for debt relief. PRSPs provide blueprints for the allocation of funds transferred from debt servicing to development, wherein education figures prominently. Thus far, PRSPs for 8 countries have been finalized[15] and another 13 are expected to complete the process soon.[16] The Special Rapporteur deems that this process necessitates human rights analysis alongside their existing assessments.[17] Distributional impacts of past education reforms require human rights impact assessment and the compatibility of fiscal choices with international legal obligations demands careful scrutiny.

(ii) National plans to be elaborated within Education for All are fewer in number than PRSPs,[18] and this process also lacks human rights input. Because national plans are often generated in parallel with the process of debt relief or aid negotiations, bridging the abyss between two parallel structures seems necessary and useful. Translating the explicit references to human rights in the Dakar Framework for Action (E/CN.4/2001/52, paras. 42-44) into national, as well as creditors' and donors', implementing plans, seems particularly opportune as it would bridge one more abyss.

(iii) Law makes choices made within debt relief or education strategies sustainable by defining the rights and corresponding responsibilities. The reporting process under international human rights treaties includes references to negotiating debt relief and forging education strategies. For example, the Committee on Economic, Social and Cultural Rights has recommended that Honduras explicitly take the Covenant into account in relation to its PRSP.[19] The Committee on the Rights of the Child has noted that only 60 per cent of children in Mauritania attend school and has suggested that priorities ensure the realization of the rights recognized in the Convention,[20] which can be facilitated through the ongoing PRSP process.

18. The linchpin for these three parallel processes is international cooperation, envisaged as key to the realization of economic, social and cultural rights and the rights of the child. Nevertheless, aid for education has not increased following the 2000 Dakar Education for All Forum, despite the donors' pledges that no country committed to attaining education for all would be left without external funding. The first meeting of the High-Level Group on Education for All, held at UNESCO on 29 and 30 October 2001, was "alarmed by the insignificant proportion of overall bilateral and multilateral assistance provided for basic education".[21] Indeed, the World Bank has decreased its lending for education, from $1.8 billion in the 1990s to just under $1 billion in 2000 and 2001.[22] The downward trend in aid flows has thus continued and ODA (official development assistance) diminished to $53 billion in 2000 from $56 billion in 1999, although European donors such as Belgium, Denmark, Luxembourg, the Netherlands, the United Kingdom and Sweden have increased their aid.[23] Moreover, the European Union's Development Council on 8 November 2001 agreed to increase aid so as to reach the 0.7 per cent target.[24] It is therefore possible to anticipate a reversal of the downward trend in aid, which would be as welcome as it is overdue. The Special Rapporteur will report to the Commission during its fifty-eighth session on further developments.

D. Determining boundaries between human rights law and trade law

19. The Commission has requested that the Special Rapporteur continue studying the impact of globalization on the right to education (see resolution 2001/32). She has focused on trade in education services (E/CN.4/2000/6, paras. 70-71, E/CN.4/2000/6/Add.2, para. 18; E/CN.4/2001/52, paras. 55-59, E/CN.4/2001/60/Add.1, paras. 36-39) and established informal contacts within the World Trade Organization in order to follow pertinent developments. She is grateful for the openness with which all her inquiries have been met.

20. The need to forge a global human rights policy has been heightened by resumed negotiations on the liberalization of trade in education services. Exporters of education services have set the tone, slanting education towards an internationally traded service. Defining the nature and scope of education that should remain exempt from trade and continue as a free public service has attained increased importance. The question is whether we are heading towards progressive liberalization of trade in education services or progressive realization of the right to education. As noted by the Government of New Zealand, at stake is "the divide between public policy and commercial activity".[25]

21. Education as a governmental responsibility and public service continues to enjoy the support of the overwhelming majority of Governments in the world. The number of commitments on education under the GATS (General Agreement on Trade in Services) is the smallest of all sectors. Moreover, proposals for further liberalization tend to concentrate on post-compulsory education, as well as emphasizing that trade should supplement rather than displace public education.[26] The Commission on Human Rights has been addressing education as it pertains to the rights of the child and emphasizing the need for progressive introduction of free secondary education (see resolution 2001/75). There is, however, no global human rights policy concerning post-secondary education and the Special Rapporteur feels that rapid developments in international trade law necessitate a decisive reaffirmation of education as a human right.

II. MONITORING PROGRESSIVE REALIZATION OF THE RIGHT TO EDUCATION

22. Human rights constitute a cross-cutting issue, enabling integration of fragmented sectoral strategies. Moreover, the human rights approach is based on regulatory and institutional coherence, as human rights are interrelated and interdependent. This often necessitates legal and institutional reform so as to create a comprehensive legal framework encompassing all facets of education and all human rights.

23. In the past three years, the Special Rapporteur has developed her analytical framework (E/CN.4/1999/49, paras. 51-74; E/CN.4/2000/6, paras. 32-65; E/CN.4/2001/52, paras. 64-77) so as to identify key parameters of the practice of States in progressive realization of the right to education. She sent a general request for information on 1 August 2001 with a view to a comprehensive assessment of the status of the right to education worldwide. She is greatly appreciative of the responses from Senegal and Laos to her preliminary assessment of the constitutional status of the right to education (E/CN.4/2001/52, paras. 67-68) and the replies received by the time this report was finalized, on 10 December 2001, from Luxembourg, Uruguay, Colombia, Tunisia, Egypt, Kuwait, Qatar, Belarus, Thailand, the People's Republic of China, Spain, Georgia, Suriname, San Marino, Azerbaijan, Lebanon and Slovenia to her request for information. The Special Rapporteur has undertaken data-gathering and analytical work to facilitate this necessary, albeit time-consuming process, as well as planning her missions to be able to study *in situ* progressive realization of the right to education. She has requested an invitation to visit Ethiopia and hopes to do so in 2002.

24. The lack of recognition of basic rights, starting with the right to registration at birth and the right to acquisition of citizenship, often preclude children from exercising their right to education. Nomadic populations tend to experience insurmountable obstacles in getting their rights acknowledged and accepted in today's State-centred world, as do minorities which are regional rather than national. The term *stateless* is used for individuals but not for minorities. Minorities such as Bidun or Kurds in the Middle East, or Roma in Europe, exemplify the need to study exclusion from education affecting considerable numbers of children without being recorded in statistics or encompassed by domestic laws. The Special Rapporteur has started examining this subject through correspondence with Governments and by planning her forthcoming visit to Turkey.

25. In many countries non-citizens do not have a legally recognized right to education, despite provisions of international human rights treaties. The Convention on the Rights of the Child posits especially that every child has the right to education. The Special Rapporteur's initial survey of constitutional guarantees of the right to education (E/CN.4/2001/52, para. 67) has revealed that absence of citizenship may constitute the most widespread legal obstacle to the enjoyment of the right to education. She will therefore carry out an in-depth study of this problem, in cooperation with the Committee on the Rights of the Child, the Office of the United Nations High Commissioner for Refugees (UNHCR), and the International Labour Organization (ILO), and bring its results to the attention of the respective Governments in order to enable them to verify, complement or correct her findings.

26. The Special Rapporteur has further developed her analytical framework to capture horizontal and vertical division of competences regarding the right to education. Horizontally, education pertains to a large number of governmental and intergovernmental institutions, ranging from education to finance or gender. Vertically, governance of education involves all levels, from local to global. The unique advantage of the human rights approach is its comprehensive legal framework, applicable regardless of the horizontal and vertical division of competences. The Special Rapporteur's focus on individual and collective governmental obligations has enabled her to operationalize the rights-based approach, as her contribution to human rights mainstreaming in international cooperation.

A. Creating rights-based indicators

27. Statistical averages camouflage gender, racial, ethnic, linguistic or religious fault-lines, which are crucial from the human rights perspective. Data are increasingly disaggregated by sex, but not by other grounds of discrimination that frequently constitute an obstacle to the enjoyment of the right to education. The recording of race, ethnicity or religion is rare, even in countries with highly developed statistical services.

28. Rights-based statistics necessitate translating human rights law into a language that can be understood and applied in education statistics. The Special Rapporteur has therefore further elaborated her 4-A scheme[27] so as to make it suitable for generating data based on parameters of rights-based education. It is presented in the table *Translating the 4-A scheme into rights-based indicators*.

29. The key innovations introduced by the human rights perspective relate to those features of the intake that are particularly important for the process of teaching and learning, the correspondence between intake and input, human rights safeguards for the process of education, and the impact of education on the enjoyment of all human rights.

Translating the 4-A scheme into rights-based indicators

AVAILABILITY	Correspondence between the PROFILE OF THE INTAKE and INPUT Correspondence between BUDGETARY ALLOCATIONS and human rights obligations Governmental supervision of EDUCATIONAL INSTITUTIONS to ensure minimum standards and foster INCLUSION Professional EDUCATORS PARENTAL CHOICE OF EDUCATION for their children	The PROFILE to include disaggregation by all internationally prohibited grounds of discrimination; BUDGETARY ALLOCATIONS at the central and local level should correspond to the guarantee of free and compulsory education for all children up to the minimum age for employment and progressive realization of the right to education; Licensing, supervision and funding of EDUCATIONAL INSTITUTIONS should correspond to human rights law, including the objective of enhancing ALL-INCLUSIVE EDUCATION; The status of PROFESSIONAL EDUCATORS should correspond to their internationally recognized rights and trade union freedoms; Recognition and enforcement of PARENTAL CHOICE should conform to international human rights law.
ACCESSIBILITY	COMPULSORY EDUCATION: elimination of all obstacles to access to education for all school-aged children POST-COMPULSORY EDUCATION: non-discriminatory access and affordability	Elimination of OBSTACLES: legal and administrative; direct, indirect and opportunity cost of education; transportation; Identification of obstacles regarding POST-COMPULSORY EDUCATION corresponding to internationally prohibited grounds of discrimination; Review of access to post-compulsory education by the criterion of AFFORDABILITY in accordance with international human rights law.
ACCEPTABILITY	MINIMUM STANDARDS TEACHING PROCESS LEARNING PROCESS	MINIMUM STANDARDS for quality, safety or environmental health should be enforced; Human rights law should guide the TEACHING PROCESS, especially the purpose, contents and methods of instruction, academic freedom or discipline; The LEARNING PROCESS requires the elimination of barriers, such as poverty-induced obstacles, language of instruction, ability/disability.
ADAPTABILITY	CONCORDANCE OF AGE-DETERMINED RIGHTS OUT-OF-SCHOOL EDUCATION for categories who cannot access educational institutions Safeguarding HUMAN RIGHTS THROUGH EDUCATION by adapting education to the enjoyment of all human rights	CONCORDANCE between the school-leaving age and the minimum age for employment, marriage, military recruitment, criminal responsibility; OUT-OF-SCHOOL EDUCATION for children and young people deprived of their liberty, refugees, internally displaced people, working children, nomadic communities; THE IMPACT OF EDUCATION ON ALL HUMAN RIGHTS to be assessed by indices such as graduate unemployment or increasing racism amongst school leavers.

B. Benchmarks for monitoring

30. The history of human rights can be depicted through two broadening concentric circles, the first showing a gradual extension of recognized rights and the second an incremental inclusion of those previously excluded. The rights first bestowed upon adult, propertied, white men have been gradually extended to women, then to non-white adults and later also to children. The right to education does not have a long history, nor does it - as yet - enjoy universal recognition as a human right. Its progressive realization can be condensed to three main stages in the process of overcoming exclusion:

> The first stage involves bestowing the right to education on those that were historically denied it (such as indigenous peoples or non-citizens) or continue to be excluded (such as domestic servants or members of nomadic communities); it routinely entails segregation, whereby girls, indigenous peoples, children with disabilities or members of minorities, are given access to education but confined to special schools;
>
> The second stage then requires tackling educational segregation and moving towards integration, with newly admitted categories having to adapt to the available schooling, regardless of their mother tongue, religion, ability or disability; girls may be admitted to schools whose curricula were designed for boys, indigenous and minority children integrated in schools that provide instruction in alien languages and descriptions of history that deny their very identity;
>
> The third stage necessitates adaptation of education to the diversity of subjects of the right to education, replacing the previous requirement upon entrants to adapt themselves to available schooling with the adaptation of education to everyone's equal right to education and equal rights in education.

1. Eradicating exclusion

31. Education statistics inevitably show that not all children have access to primary education. The standard follow-up to this finding are efforts to determine how many children are affected, but these efforts never yield precise figures because comprehensive data on children are lacking where they are needed the most. The Special Rapporteur emphasized in her first report the need to differentiate between children who are *unreached* and those who are *excluded* (E/CN.4/1999/49, para. 58). The grounds for exclusion may coincide with individual prohibited grounds of discrimination or combine several of them. The first step towards eliminating discrimination in education thus consists of itemizing the contemporary pattern of discriminatory exclusion in the world.

32. In its resolution 2001/29, the Commission on Human Rights reiterated the necessity to progressively ensure that primary education is compulsory, accessible and available free to all and identified those often denied education: girls (including pregnant girls and child-mothers); children in rural areas; minority, indigenous, migrant and refugee children; internally displaced

children, children affected by armed conflicts, children with disabilities, children affected by HIV/AIDS and children deprived of their liberty. The Commission prioritized children living in poverty, those with special educational needs and those requiring special protection (resolution 2000/85 on the rights of the child), with added emphasis on the internally displaced (resolution 2001/54) and, once again, minorities (resolution 2001/55). The Commission's listing of categories often denied education illustrates how the initially simple and neat legal categorizations of prohibited grounds and types of discrimination have gradually become complex. An increasing number of collective and individual characteristics have been classified as prohibited grounds of discrimination. Nevertheless, discriminatory practices often merge a host of prohibited grounds of discrimination with additional exclusionary criteria that have not yet been outlawed in domestic laws.

33. The Commission's enumeration of those who are likely to be excluded or unreached requires recalling the path travelled thus far and outlining signposts for proceeding further. The first steps have involved identifying those features which typically entail denials of the right to education and listing them as prohibited grounds of discrimination. The International Labour Organization highlighted in 1988 drawbacks of that approach: "[A]ttempts to define race and colour are of little value in the application of legislation that is intended to combat discrimination insofar as it is not the race, colour or ethnic origin of the person who is discriminated against that is really the point at issue, but rather the negative aspects that the author of the discrimination imputes to the person who is the victim of discrimination."[28] Indeed, schools reflect the surrounding setting and may reinforce prejudicial portrayals of victims of discrimination. Education is embedded in the existing values but also helps create new values and attitudes. Hence, human rights law mandates its deliberate employment to eliminate discrimination, which requires a permanent process so that education can be adjusted to changes in society.

34. It is relatively easy to capture denials of education by tabulating and then quantifying legal and administrative exclusions from education. This method cannot capture the fear that children may feel because they are female, improperly dressed, or have been victims of harassment and are afraid to go to school; fear cannot be tabulated and converted into statistics. Girls are targeted more than boys, the cause of bullying can be their dress code, and the consequence their dropping out of school[29] Fear can be a consequence of prejudicial portrayals, particularly frequent in post-conflict situations. The Special Representative on internally displaced persons has emphasized "fear of the identification of children for what they are and repression or reprisals that may target the family if children are sent to school"[30].

2. Nurturing inclusive education

35. In overcoming exclusion, the history of education has exhibited segregation on all nowadays prohibited grounds of discrimination. Racial segregation, in its extreme form of apartheid, brought about the earliest international calls for desegregation as well as international treaties outlawing discrimination in education and mandating its elimination. Girls used to be - and still are in some countries - separated from boys, and single-sex schools are a topic of continued debate (E/CN.4/2000/6/Add.2, para. 83). Different religious

communities are often allowed to educate "their" children separately, as in Northern Ireland. Language is frequently used as justification for segregation in schooling and has generated a stream of court cases in Canada. Children with disabilities still tend to be segregated in "special schools", despite overwhelming empirical evidence in favour of all-inclusive schooling.

36. In 1947, the first United Nations report on the prevention of discrimination emphasized that "the whole field of action to prevent discrimination requires a vast programme of education". The emphasis on education derived from knowledge that no law would be effective, and might indeed be counterproductive, unless it enjoyed at least some support by those to whom it was addressed and the general support of the population. The words of caution about educational programmes merit repeating: "Forcing a prejudiced person to read or hear exhortations on tolerance may only increase his prejudice. Overenthusiastic appraisals of the contributions of a minority may create a reaction of distaste for members of that minority; and programmes improperly presented, even with the best intentions, may create an awareness of group difference that did not previously exist."[31]

37. Literature about discrimination abounds with assertions that prejudice breeds discrimination, yet the reverse is also true. Discrimination as a medium of indoctrination breeds prejudice. Children learn through observation and imitation. They are likely to start perpetuating discriminatory practices much before they can understand the word "discrimination" and to internalize underlying prejudices in the same way as they accept any other facet of the way of life in their family and community. Prejudice is sustained from one generation to another through social usage. When it favours individual and group self-interest, it is easy to rationalize. Having domestic servants makes life easy for the family. As they work in individual households, nobody knows how many they may be or where they are, but fragmentary data highlight their plight. Domestic servants may start working at the age of four, at least 80 per cent are girls, and 70 per cent are come from categories victimized by discrimination, such as frowned-upon minorities or migrants.[32] The underlying rationale behind such phenomena includes rational arguments: the lack of equal opportunities for victims of discrimination is easily converted into factual evidence of their inferiority, feeding the perpetuation of discrimination and the underlying prejudices. In 1957, the first United Nations study on discrimination in education had this to say about the rationale for discrimination: "A policy based on fear of losing a privileged position necessarily entails measures to deny education to an entire population group, or to allow it access only to education at a lower level."[33]

C. Signposts for the elimination of discrimination

38. Education can be used as a means to both retain and eliminate inequality. Because it can serve these two mutually contradictory purposes, international human rights law prioritizes the elimination of inequality as a key purpose of education. Many factors and processes lead in the opposite direction. The inter-generational transmission of educational inequalities is exacerbated by the increasing costs of education. Denials of education to children determined to be "uneducable" are reinforced by inappropriate languages of instruction, which increase the

numbers of children deemed "uneducable". Non-adaptation of education to the life prospects of learners leads to lack of motivation to attend school. Endowing education with the capacity to achieve desired rather than unwanted outcomes necessitates reviewing it in its entirety according to human rights criteria.

39. It is well known that family background constitutes one of the key determinants of children's education, with the educational development of infants from the highest class being far superior to those in the lowest class (E/CN.4/2000/6/Add.2, para. 48). This gap broadens through the inter-generational transmission of educational advantage or deprivation. As already described by the Special Rapporteur on economic, social and cultural rights in 1975, "inequality in education is the most important means by which occupational selection takes place, and hence the most important means by which advantages and disadvantages are transmitted from generation to generation".[34] The pattern of advantage and disadvantage affects generations differently, depending on their sex and changing gender roles, or their perceived abilities and disabilities. Monitoring progressive realization of the right to education is broadening and deepening our knowledge of inequalities that need to be exposed so that they could be effectively opposed and remedied.

1. Gender

40. Strengthened and broadened commitments to gender equality in access to education have not yet evolved into similar commitments to attaining gender equality through education. There is a colossal difference between the two. Getting girls into schools often founders because education as a single sector does not, on its own, generate sufficiently attractive incentives for the girls' parents and the girls themselves if educated girls cannot apply their education to sustaining themselves and/or helping their parents. Years of attending school appear wasted when women do not have access to employment and/or are precluded from becoming self-employed, do not have a choice as to whether to marry and bear children, or their opportunities for political representation are foreclosed.

41. One of key commitments at Dakar was to eliminate gender disparities in primary and secondary education by 2005.[35] As there are merely three years left to 2005, this will be the first performance benchmark. Statistics needed to assess progress are lacking, especially for secondary education. Data for monitoring gender gaps in primary school enrolments are increasingly available and are reproduced in the table *Countdown to 2005: Closing the gender gap in primary school enrolments*.

42. Compared with the Special Rapporteur's previous analysis of data on the gender gap in primary school enrolments (E/CN.4/1999/49, para. 55), there is evident progress in data collection, necessary for monitoring and corrective action. There are countries where not even estimates of the gender gap are available, although all indications point to the necessity of prioritizing girls' education. The scope for such corrective action is depicted by UNICEF's estimate that girls' enrolment in Afghanistan may be as low as 5 per cent,[36] by the 26 per cent gender gap in Chad and 33 per cent in Yemen, or the 11 per cent inverse gender ratio in Lesotho.

Countdown to the year 2005: Closing the gender gap in primary school enrolments

Reverse gender gap: Lower enrolment of boys			No gender gap, or less than 2% difference			Less than 10% difference in enrolments favouring boys			More than 10% difference in enrolments favouring boys		
	Girls	Boys		Girls	Boys		Girls	Boys		Girls	Boys
Bahrain	98%	96%	Argentina	100%	100%	Algeria	92%	96%	Burkina Faso	28%	40%
Botswana	82%	79%	Bolivia	100%	100%	Angola	53%	61%	Central African Republic	43%	64%
Cuba	97%	96%	Chile	87%	88%	Brazil	96%	100%	Chad	42%	68%
Dominican Republic	88%	87%	China	100%	100%	Burundi	34%	41%	Côte d'Ivoire	51%	67%
Jordan	83%	82%	Costa Rica	92%	92%	Comoros	46%	54%	Djibouti	27%	37%
Lesotho	64%	56%	Fiji	100%	100%	Democratic Republic of the Congo	31%	33%	Ethiopia	30%	41%
Madagascar	63%	62%	Kuwait	67%	68%	Egypt	89%	95%	Guinea	37%	54%
Namibia	90%	83%	Malaysia	98%	98%	El Salvador	80%	82%	Guinea-Bissau	44%	62%
Paraguay	92%	91%	Maldives	100%	100%	Eritrea	31%	36%	Iraq	74%	85%
Rwanda	92%	90%	Mauritius	93%	93%	Gambia	57%	65%	Liberia	35%	46%
Samoa	98%	95%	Mexico	100%	100%	Guatemala	80%	85%	Mali	34%	49%
Swaziland	78%	76%	Nicaragua	80%	80%	Indonesia	82%	86%	Morocco	73%	85%
Tanzania	49%	47%	Peru	100%	100%	Iran	78%	81%	Niger	20%	32%
Uruguay	92%	92%	Qatar	85%	86%	Laos	73%	79%	Papua New Guinea	78%	91%
Zimbabwe	91%	90%	Sri Lanka	100%	100	Lebanon	77%	79%	Senegal	54%	64%
			United Arab Emirates	82%	83%	Mauritania	58%	62%	Togo	78%	99%
			Vanuatu	100%	100%	Mozambique	37%	45%	Yemen	44%	77%
			Venezuela	88%	88%	Oman	65%	67%			
						Philippines	97%	99%			
						Saudi Arabia	57%	61%			
						Sierra Leone	55%	60%			
						Sudan	42%	50%			
						Syria	89%	96%			
						Thailand	76%	78%			
						Tunisia	96%	99%			
						Zambia	72%	74%			

Note: The data have been collected by the UNESCO Institute for Education as part of the monitoring process of Education for All (*2001 Monitoring Report on Education for All*, UNESCO/EFA, Paris, October 2001, www.unesco.org/education/efa). Most figures refer to 1998, the most recent year for which education statistics are available. These figures do not reflect precise measurements but are estimates.

2. Eliminating 3-D obstacles: disability, difficulty, disadvantage

43. Overcoming exclusion and segregation inevitably entails adequate and sustained public funding. Providing education for children with disabilities may require increasing the teacher-pupil ratio from 1:30 to 1:5, or even 1:2, thus significantly increasing the cost of education. This is exemplified in two lines of argument regarding children with disabilities. The first affirms and specifies the rights which such children should have, creating an attractive conceptual framework based on equal rights and the best interests of each child, and arguing that schools should adapt to each child rather than rejecting those labelled "difficult-to-educate". The second acknowledges openly and honestly that "the reason why so many pupils with disabilities do not attend ordinary schools is that ordinary schools cannot cater for them".[37] The reason is insufficient resources - space, time, teaching staff, teaching and learning aids - which budgetary stringency and increased competitiveness are making worse. However, denials of education are rarely based on cost alone.

44. The entry of the concept of "learners with special needs" or "exceptional learners" into educationalists' vocabulary has been driven by the guilt associated with the pejorative reference to "the disabled". In the former Soviet Union, a scientific discipline was created - called *defectology* - which profoundly influenced the fate of people with disabilities. Children categorized as having "defects" early in their lives were segregated into separate institutions, never to join the mainstream, doomed to lifelong institutionalization in institutions endowed with fewer and fewer resources.[38] Against this heritage, reduced governmental allocations for all public institutions have further diminished prospects for the equal right to education for all those who are dependent on public funding, especially when additional funding is necessary to equalize educational opportunities.

45. The percentage of learners provided with additional resources varies between 1 per cent and 41 per cent,[39] making it obvious that the term has no internationally defined meaning. Differences are striking even within Europe, with Finland reporting 18 per cent, and Greece, Italy and Spain less than 2 per cent of children with special educational needs.[40] An important reason for such incomparable figures is the blurring of difference between the three Ds - disability, difficulty and disadvantage. Disability is commonly defined by reliance on the medical model, and learners with visual, hearing, physical or mental impairments are segregated into special schools or provided with teaching and learning aids in mainstream education. Learning difficulties are more difficult to define and categorize, while the blurring of disadvantage and disability brings immigrant or refugee or minority children into the purview of "disability" because they may be unfamiliar with the language of instruction.

III. PROTECTING HUMAN RIGHTS IN EDUCATION

46. Education involves more people than any other institutionalized activity and this may well be the reason for emphasizing its "hardware" at the expense of "software". There is indeed a disequilibrium between the formal institutional structure and content of schooling on the one hand and the value-orientated substance of teaching and learning on the other. The school as an institution reaches the largest number of children and young people, at their most impressionable age. Fierce disputes about the orientation and content of schooling are thus endless.

47. Alongside the rights of parents, the human rights of two principal categories - teachers and pupils - should form the core safeguards in education. Their rights are, however, often questioned by assertions that teachers are merely a factor in the production of human capital, or that children are the property of their parents. The Special Rapporteur's priority is therefore to reinforce the right to education by striving to improve the recognition and enjoyment of the key actors in its implementation and realization.

A. Applying human rights law throughout the process of education

48. The Western European heritage includes the right of the Government to deprive a child of liberty for the purpose of educational supervision. This is reflected in the European Convention on Human Rights as the duty of the child, for which the extreme mode of enforcement is the placement of a recalcitrant child in prison. The European Court of Human Rights, in interpreting that provision of the Convention, has found a human rights violation where a child was deprived of liberty "in conditions of virtual isolation and without the assistance of staff with educational training", which, the Court held, could not further any educational purpose.[41] The Court has, however, accepted that compulsory education could entail detention.[42] The European Convention on Human Rights is an old document, adopted in 1950, and thus it does not reflect either the right to education as it was subsequently defined in international human rights law nor the even more recent concept of the rights of the child. The Special Rapporteur is receiving increasing numbers of letters questioning the notion of compulsory education from the human rights perspective. She addressed this issue in her first annual report by focusing on education as a duty of the child (E/CN.4/1999/49, paras. 75-79). Education is indeed defined as a duty in some constitutions. The freedom of parents to choose education for their children may not be recognized nor the rights of the child as the subject of the right to education. The notion of home schooling is unknown in many countries, let alone regulated. Its examination through the lens of the rights of the child seems long overdue, and the Special Rapporteur will study its human rights dimensions and report to the Commission.

49. The voices of Afghan children, to be conveyed to the Special Session of the General Assembly on Children, echoes a simple message: children want to go to school. One girl said: "It is binding for every Muslim to get educated but our leaders do not allow us to go to school". A boy added: "We go to school but it is not good because we only study religious subjects".[43] The rights of the child entail the obligation of Governments, individual and collective, to eliminate obstacles impeding children's enjoyment of their right to education. The Commission on Human Rights has condemned the denial of access to education to girls as a human rights violation, insisting on "the right of women and girls to education without discrimination, the reopening of schools and the admission of women and girls to all levels of education" (resolution 1999/9). Translating into practice every child's right to education often necessitates overcoming the resistance of the adults who are the closest to children. If all parents had the best interests of their children at heart, the rights of the child would hardly be necessary. The rationale for human rights safeguards is that power is easily abused, hence safeguards against its abuse are always necessary. Children are the easiest victims of abuses of power by their parents, teachers or Governments. Therefore, alongside its resolution on the right to education, the Commission on Human Rights has reiterated its previous request for the inclusion of the rights of the child perspective in the Special Rapporteur's mandate (resolution 2001/75).

50. Education consists of two parallel processes - teaching and learning. Thus, the role of teachers is crucial in facilitating the learning process. From 24 to 26 July 2001, the Special Rapporteur attended the World Congress of Education International. At a time when the shortage of teachers in many countries has exposed the deteriorating appeal of the profession, it was gratifying to hear education defined as "the glue to hold society together" and to hear teachers speaking out for children, even while grieving for their colleagues who had committed suicide to protest the deplorable conditions of their profession.

51. Alongside parents, it is teachers who translate the abstractly defined aims and purposes of education into messages which children can recognize and internalize. With the advent of human rights education, it is teachers who are expected to adapt the orientation, contents and methods of education to the human rights requirements. And yet, *their* rights are often denied or violated. Moreover, teachers introducing human rights education may be criminally prosecuted.

B. Combating human rights violations in education

52. In resolution 2001/47 the Commission reiterated its concern at the detention and ill-treatment of people exercising their freedom of expression and asked all special rapporteurs to pay particular attention within their mandates to people who have been detained, subjected to violence, ill-treated, intimidated or discriminated against for having exercised their right to freedom of opinion and expression. In education, this is frequently the fate of university professors and students. Moreover, their victimization is often triggered by their involvement in human rights education. Reports on the victimization of university students protesting against human rights violations or the harassment of university professors involved in promoting and protecting human rights are much too frequent to be ignored. The Special Rapporteur has initiated consultations with the Special Rapporteurs on freedom of expression and on human rights defenders with a view to developing a joint response to such allegations.

53. In August 2001, the Special Rapporteur was able to finalize an inquiry into the allegations she had brought to the attention of the Government of the Gambia (E/CN.4/2001/52, para. 23). Her correspondence with the Government related to the quelling of a student demonstration in April 2000 and the outcomes of the work of the commission of inquiry established to carry out an investigation and recommend follow-up action. To her deep regret, her letters have remained unanswered. Her presence in the Gambia provided an excellent opportunity to overcome that difficulty, and the Special Rapporteur acknowledges with gratitude the cooperation extended her by the Solicitor General of the Gambia, Raymond Sock.

54. The Commission of Inquiry was established in May and completed its work in August 2000. It noted that the events of 10 and 11 April 2000 had been "clearly a turning point in the history of the Gambian nation".[44] A student demonstration, planned for 10 April 2000 to protest previous abuses by law enforcement officials against students, evolved into a major public disturbance. The students did not get the required permit, although the law enforcement agencies had apparently known that the demonstration was going to take place as they were deployed and armed. The Commission's recommendations included prosecution of individual student leaders. It called upon key law enforcement personnel to accept responsibility for causing deaths and injury, and recommended compensation for the families of the dead and injured. Unarmed students and armed law enforcement officials are impossible to perceive as

equal parties to a conflict; it is the latter that act as agents of the State and are trained and armed to do so. Much as the Special Rapporteur was pleased to be able to clarify the factual background of this case, she hopes that the difference between acts of State and actions by private individuals will become defined in future changes of Gambian "living law".

55. The most powerful form of advocacy is demonstration. A single court case which has affirmed education as a human right becomes a powerful tool of human rights education, showing that law can be made to work as a means for effectuating change and dispelling suspicions that international human rights treaties and constitutional human rights guarantees are parchment promises.

56. Human rights commissions, ombudsmen or *defensores del pueblo* have been set up in many countries. They provide a bridge between legal and political processes. Such institutions provide a wealth of approaches and experience in translating the spirit and wording of international human rights law into domestic practice. They have been particularly effective in articulating how human rights should be defined and translated into practice in the development perspective.

57. Contrary to the frequent definition of enforceable human rights as only civil and political rights, human rights commissions and children's ombudsmen tend to have much of their caseload dominated by complaints against violations of economic and social rights. For example, 44.5 per cent of the cases dealt with by the Indonesian National Commission on Human Rights in 2000 were classified as violations of the "right to welfare", while complaints regarding the right to education include the high costs of education, as well as the non-implementation of laws or policies mandating its realization.[45] Such practices underpin the conceptual universality of human rights, as well as providing a springboard for enhancing the right to education. The Special Rapporteur has requested an invitation for a visit to Indonesia, hoping to contribute to the translation of the human rights commitments of the new Government into a rights-based strategy for education.

IV. ENHANCING HUMAN RIGHTS THROUGH EDUCATION

58. The contribution of human rights in unifying fragmented sectoral strategies is exemplified in subsuming education under social rather than economic development, as has been done with international development goals.[46] This conflicts with the priority accorded education in the elimination of poverty. Education as an economic right necessitates the adaptation of schooling to facilitating subsequent economic self-sufficiency through employment or self-employment. Integrating economic, social, cultural and political facets of education is facilitated by the indivisibility and interrelatedness of human rights. Hence, such an integrated approach facilitates adapting education to key contemporary challenges, including suppression of terrorism and prevention of violence.

A. Education as keystone for self-sustaining livelihoods

59. With the benefit of hindsight, it is easy to highlight the main features of the collapsed model of schooling, which defined education as the springboard to guaranteed employment in the civil service. The whole educational pyramid could be designed according to this model as

long as the Government was the principal employer. The language of instruction was the official language of the country, primary schooling was merely a preparatory stage for further education, the right to work was defined as access to a public-sector, often lifelong, job. The collapse of that model created phenomena such as graduate unemployment, or - worse - the abandonment of schooling,[47] which visibly and painfully testifies to the need for adaptability of education. Education statistics measure only internal objectives of education, such as learning outcomes. Assessing the contribution of education to what the learners can do with it after they finish school is key to adapting it to changed circumstances, underpinned by the interrelatedness of human rights.

60. Parental motivations for sending children to school can be undermined by "a double loss: first they cannot participate in farming and herding and thus contribute to subsistence, and, second, they might be able to get a job after school but would be unwilling to accept farming again".[48] This is particularly frequent for girls: "Since girls cannot get jobs if they have only primary education, parents ask: why pay for them to sit six years in classroom, when they could be at home working?"[49] Similarly, research in South America has confirmed that, in rural areas, "a sizeable proportion of parents perceive education as irrelevant to their children's future and thus prefer that they work".[50] The cost of education encompasses, alongside direct and indirect expenses, the opportunity cost. The process of impoverishment, declining public-sector employment and "informalization" of work often replaces by child labour the jobs which parents should, but do not, have. The Commission has endorsed the Special Rapporteur's attention to the frequent inability of working children to attend school and universalized her request for information on the gap between the school-leaving age and the minimum age for employment (E/CN.4/2001/62, para. 28) by including it in its resolution 2001/29.

61. Continuing debates about the length of education that should be compulsory for all children, whether called "primary" or "basic", are particularly worrisome, as the Special Rapporteur has already pointed out many times. The draft final document for the Special Session of the General Assembly on Children, as elaborated in May 2001, referred to five years of primary schooling.[51] The forthcoming Special Session in May 2002 provides an opportunity to reinforce the linkage between the school-leaving age and the minimum age for employment, applied by the International Labour Organization as of 1921.

62. Available evidence indicates that the key to reducing poverty is *secondary* rather than primary education. The Republic of Korea, often cited as the model for the economic rationale behind its investment in education, has found that *secondary* education had the "crucial relationship with economic growth".[52] The South African Human Rights Commission has objected to eight years of schooling defined as "basic education", deeming it acceptable under the current fiscal constraints, but urging the Government to extend it to 10 years.[53] The United Nations Economic Commission for Latin America and the Caribbean (ECLAC) has found that young people have to complete *secondary* education to achieve an 80 per cent probability of avoiding poverty, and its subsequent research has confirmed that between 72 and 96 per cent of families where the parents have less than nine years of education live in poverty.[54]

63. There is more heat than light in the current debates about *vocationalizing* primary education, with some advocating this approach as a way of making education relevant and others opposing the addition of vocational purposes and contents to formal schooling. Experiences with the implementation of the governmental obligation to provide education for children rescued from intolerable forms of child labour[55] are generating necessary empirical evidence as to what works, how and why, thus providing valuable input for much-needed legal reforms at all levels, from global to local.

B. The challenge of combating terrorism and preventing violence

64. Concerns about collective and individual security underpin all traditional governmental obligations, by far predating human rights. They require *security* to encompass economic, social and societal safeguards, as mandated by international human rights law from its very creation.

65. Short-term measures addressing specific manifestations of economic recession or particular dimensions of terrorism are habitually followed by focusing on education in forging long-term approaches. In those parts of the world that are affected by current anti-terrorism strategies, this will necessitate remedying the previous neglect of education. Afghanistan has experienced such neglect, while the World Bank estimates that Armenia, Azerbaijan, Georgia and Tajikistan cannot afford universal primary education.[56] Even more importantly, considerations of "hardware", consisting of funding and schools, leads to discussing what should be taught, who should do the teaching and how should this be done.

66. Education has increasingly become part of humanitarian relief, and claims that "children have a fundamental right to receive educational services during emergencies" have been made by UNICEF.[57] UNHCR has noted that prospects of voluntary repatriation point to using the curriculum and textbooks of the refugees' country of origin, with modifications "if refugees have a valid objection to some particular part of the curriculum".[58] Teaching necessitates the choice of a language, with consequences that emerge later. As has been noted for Afghan refugees, the language of instruction created "the polarization of Dari- and Pashtu-speaking refugee communities in Iran and Pakistan with little opportunity to learn each other's language is likely to have a lasting effect on social integration and nation-building inside Afghanistan".[59]

67. The Commission has postulated children's freedom from violence (in resolution 2001/75) to guide work in this area and emphasized the need to study the impact of violence on children. Although it is known that "children's violent behaviour often has its origin in adult violence to children",[60] this finding is disturbing and tends to be suppressed. Catherine Bonnet has argued that this whole subject was taboo until the 1960s because it reveals the shameful behaviour of adults.[61] The Committee on the Rights of the Child has highlighted the need to take into account children's life experiences when focusing on the aims of education, especially in international policies and programmes on education.[62] The Madrid Conference on School Education in Relation with Freedom of Religion and Belief, Tolerance and Non-Discrimination has pointed out the need to tackle "school curricula, textbooks and teaching methods".[63] Indeed, controversies regarding teaching about wars, conflicts and associated abuses occur daily,

worldwide. School textbooks have been found to have included descriptions of "Serbian aggressors" as "merciless barbarians who ran amok" in Croatia.[64] In Serbia, the same historical period was described as "enforced expulsion of the Serbian population", reminiscent of the "genocide 50 years earlier".[65]

68. The key word in recent resolutions of the Commission on Human Rights addressing the objective towards which education should be moulded is tolerance. Setting the limits of the intolerable is the first necessary step towards creating space for tolerance. The Commission then noted that no society is beyond the dangers posed by the absence of tolerance and the violence that this can breed (resolution 2000/50) and highlighted the need to address discrimination in the process of teaching and learning, including in educational curricula and textbooks (resolution 2001/29). Primary-school curricula are similar worldwide and devote the highest percentage of time in school, 28 to 49 per cent, to language instruction.[66] Too little is known about translating human rights requirements into a language that children can understand. Moreover, the messages used in language instruction may conflict with human rights education, which, if at all, becomes part of the school curriculum much later. In-school messages may conflict with out-of-school messages.

69. In most countries, domestic law protects individuals against being publicly insulted, but prohibitions of "group defamation"[67] are rare. Maligning "foreigners" can be deemed an expression of patriotism and is often a vote-winner. This has often been emphasized by the European Commission against Racism and Intolerance (ECRI), which, in the case of Denmark, has pointed out that negative stereotypes and prejudices "are promoted by public opinion leaders, including political elites from across the political spectrum".[68] Their inevitable influence on children and young people undermines human rights messages in school-based education. In addition, David Coulby has pointed out that schools and universities "are being involved in the encouragement of xenophobia as a mode of state-building".[69] Applied research into obstacles to the full enjoyment of the right to education is therefore necessary from the local to the global level, throughout the world, and the Special Rapporteur shall accord it priority in her work.

V. CONCLUSIONS AND RECOMMENDATIONS

70. All of us, as adults, share the power of affirming or negating children's right to education. Children can only have rights only if we comply with our individual and collective duties. Governmental human rights obligations, whether these guarantee public security or the right to education, require well-funded public services. The Governments' ability and willingness to raise revenue and accord priority to human rights in its distribution is key to human rights protection. Domestically, solidarity is enforced through the duty to pay tax, from which education is generally financed. Lower taxes may seem popular until they translate into inadequate protection of public safety or ruined public schools. Internationally, the universality of the right to education is premised on international cooperation so as to equalize opportunities for the enjoyment of the right to education by supplementing the insufficient resources of poor countries.

71. During economic recessions, the importance of human rights work increases, in spite of greater challenges. Globalization, much discussed in theory, has in practice demonstrated its harmful effects by globalizing the cyclical slowdown of the economy that began in the second half of 2000. Reluctance to use the "r-word" (recession) continued until the aftermath of 11 September. It is at a time of economic crisis that human rights guarantees become crucial, precisely when they are under the greatest strain. The association between the Great Depression and the subsequent affirmation of economic and social rights in the Universal Declaration of Human Rights is well known and worth recalling at this juncture.

72. Raising the global priority of education necessitates ranking its long-term benefits over short-term priorities. The human rights perspective enables the connection of issues that tend to be treated in isolation within a comprehensive legal framework that applies both domestically and internationally. The integrated conceptual framework which the human rights approach entails facilitates cross-sectoral linkages whereby education can be adapted to the goals of poverty eradication, gender equality, or the prevention of terrorism and violence.

Notes

[1] The World Bank, *The World Bank and Legal Technical Assistance: Initial Lessons*, Policy Research Working Paper No. 1414, Washington, D.C., January 1995.

[2] Myrdal, G., *The Challenge of World Poverty: A World Anti-Poverty Programme in Outline*, New York, The Penguin Press and Pantheon Books, 1970, p. 17.

[3] A joint statement by Koichiro Matsuura (Director-General of UNESCO), James Wolfensohn (President of the World Bank), Thoraya Obaid (Executive Director of UNFPA), Carol Bellamy (Executive Director of UNICEF), and Mark Malloch Brown (Administrator of UNDP) entitled "For 113 million children, school would be a good start" was published in the International Herald Tribune on 5-6 May 2001.

[4] *The Dakar Framework for Action, Education for All: Meeting Our Collective Commitments, adopted by the World Education Forum, Dakar, Senegal, 26-28 April 2000*, UNESCO, 2000, para. 19.

[5] *2001 Monitoring Report on Education for All*, UNESCO/EFA, Paris, October 2001 (www.unesco.org/education/efa).

[6] The *2001 Monitoring Report on Education for All* has noted that "the existence of large numbers of over-aged pupils must not prevent access to school for those of official school age and thereby delay the achievement of UPE goals". Dismissing over-aged children from school or precluding their enrolment would seem a particularly inappropriate remedy as it would remove the problem from the education sector without solving it, and increase the numbers of illiterate adults.

[7] Constitutional Court of South Africa, *Minister of Education v. Doreen Harris*, Case CCT 13/01, 5 October 2001.

[8] UNESCO, "A summary statistical review of education in the world, 1960-1982", document ED/BIE/CONFINTED 39/Rev.1, July 1984.

[9] UNESCO data show that the percentage of children aged 6-11 enrolled in primary school declined between 1970 and 1985 from 95.1 to 90.0 per cent in Belgium, from 90.6 to 85.8 per cent in France, from 97.3 to 89.9 per cent in Greece, from 93.2 to 88.7 per cent in Ireland, from 87.9 to 78.2 per cent in Italy, from 90.8 to 79.1 per cent in the United Kingdom, and from 100.0 to 95.0 per cent in the United States.

[10] Tanzi, V. and Schuknecht, L., *Public Spending in the 20th Century: A Global Perspective*, Cambridge University Press, 2000, p. 184.

[11] United Nations, *1985 Report on the World Social Situation*, New York, 1985, Sales No. E.85.IV.2, p. 34.

[12] This seminar was part of a series entitled "Structural Adjustment: 20 Years is Enough?", organized by Globalization Challenge Initiative, Integrated Social Development Centre, Centre for Private and Public Cooperation, ActionAid and Initiative for Policy Dialogue, in Washington D.C., from 23 to 26 April 2001.

[13] "The World Bank and user fees in health, education and water", *World Bank Issue Brief*, September 2001, www.worldbank.org.

[14] Perkins, G. and Yemtsov, R., *Armenia: Restructuring to Sustain Universal General Education,* World Bank Technical Paper No. 498, Washington D.C., March 2001, p. 11.

[15] These are Uganda (24 March 2000), Burkina Faso (25 May 2000), Tanzania (1 October 2000), Mauritania (13 December 2000), Bolivia (1 March 2001), Nicaragua (13 September 2001), Honduras (27 September 2001) and Mozambique (1 October 2001).

[16] The countries whose PRSPs are scheduled for review by the Executive Boards of the World Bank and the International Monetary Fund are Benin, the Central African Republic, Chad, Georgia, Ghana, Guinea, Guyana, Kenya, the former Yugoslav Republic of Macedonia, Mali, Rwanda, Tajikistan and Zambia.

[17] IMF/World Bank, Guidelines for Joint Staff Assessment of a Poverty Reduction Strategy Paper, 18 April 2001, www.worldbank.org/prsp.

[18] The first post-Dakar assessment of progress noted that 66 countries responded to UNESCO's query regarding national plans, with 41 countries stating that they had such plans, out of which 39 had been prepared before the Dakar Forum. *2001 Monitoring Report on Education for All*, UNESCO/EFA, Paris, October 2001 (www.unesco.org/education/efa).

[19] Concluding observations of the Committee on Economic, Social and Cultural Rights: Honduras, E/C.12/1/Add.57 of 21 May 2001, para. 34.

[20] Concluding observations of the Committee on the Rights of the Child: Mauritania, CRC/C/15/Add.159 of 12 October 2001, paras. 45 and 14.

[21] Communiqué from High-Level Group on Education for All, First Meeting, UNESCO, Paris, 29-30 October 2001, www.unesco.org/education/efa, para. 10.

[22] IMF-World Bank Development Committee, "Education for dynamic economies: Accelerating progress towards Education for All (EFA)", Paper prepared by the staff of the World Bank, DC/2001-0025, 18 September 2001.

[23] IMF-World Bank Development Committee, "Recent trends in the transfer of resources to developing countries", DC/2001-0022, 21 August 2001.

[24] "EU agrees on joint aid target of 0.7 per cent", *Development Today*, No. 17-18/01, 9 November 2001.

[25] World Trade Organization, Negotiating proposal for education services: Communication from New Zealand, S/CSS/W/93 of 26 June 2001.

[26] World Trade Organization, "Higher (tertiary) education, adult education, and training: Communication from the United States", S/CSS/W/23, 18 December 2000.

[27] The 4-A scheme structures governmental human rights obligations stemming from the right to education into making education available, accessible, acceptable and adaptable (E/CN.4/1999/49, paras. 51-74; E/CN.4/2000/6, paras. 32-65; E/CN.4/2001/52, paras. 64-65).

[28] International Labour Organization, *Equality in Employment and Occupation. General Survey by the Committee of Experts on the Application of Conventions and Recommendations*, 75th session, 1988, Report III (Part 4 B), para. 33.

[29] Ohsako, T. (ed.), *Violence at School: Global Issues and Interventions*, International Bureau of Education, UNESCO, Paris, 1997, pp. 40 and 48.

[30] Commission on Human Rights - Analytical report of the Secretary-General on internally displaced persons, E/CN.4/1992/23 of 14 February 1992, paras. 70-71.

[31] Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, report on the prevention of discrimination (prepared by the Secretary-General), E/CN.4/Sub.2/40 of 7 June 1949, paras. 17 (c) and 177.

[32] Sub-Commission on the Promotion and Protection of Human Rights, Child domestic workers in Benin, Costa Rica and India. Submission by Anti-Slavery International to the twenty-fifth session of the Working Group on Contemporary Forms of Slavery, Geneva, 14-23 June 2000.

[33] Ammon, C.D., *Study of Discrimination in Education*, United Nations, New York, Sales No. 1957.XIV.3, August 1957, p. 10.

[34] United Nations, *The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress* by Manouchehr Ganji, Special Rapporteur of the Commission on Human Rights, Publication E.75.XIV.2, New York, 1975, para. 68.

[35] The Dakar Framework for Action, *Education for All: Meeting Our Collective Commitments, adopted by the World Education Forum, Dakar, Senegal, 26-28 April 2000*, UNESCO, 2000, para. 7 (v).

[36] UNICEF data for Afghanistan, accompanied by a cautionary remark that they refer only to a part of the country, place girls' gross enrolment in primary education in 1995-1999 at 5 per cent. (UNICEF, *The State of the World's Children 2001*, p. 90).

[37] Hegarty, S., *Educating Children and Young People with Disabilities. Principles and the Review of Practice*, UNESCO, Paris, [undated], p. 49.

[38] Mental Disability Rights International, *Children in Russia's Institutions: Human Rights and Opportunities for Reform*, Washington D.C, February 1999, p. 9.

[39] *Education at a Glance: 2001 OECD Indicators*, Paris, 2001, p. 174.

[40] European Commission, *Key Data on Education in Europe 1999/2000*, Office for Official Publications of the European Communities, Luxembourg, 2000, pp. 141 and 149.

[41] European Court of Human Rights, *Bouamar v. Belgium*, Judgement of 29 February 1988, A-129.

[42] European Court of Human Rights, *Nielsen v. Denmark*, Judgement of 28 November 1988, A-144.

[43] Save the Children, *Afghanistan's Children Speak to the UN Special Session, 19-21 September 2001.*

[44] *Report of the Commission of Inquiry into Public Disturbances of 10 and 11 April 2000,* August 2000, p. 44.

[45] The National Commission on Human Rights Indonesia, *Annual Report 2000*, Jakarta, 2001, pp. 69 and 226.

[46] The *operationalization* of international development goals has subsumed universal primary education under social development, suggesting as indicators net enrolment in primary education, completion of 4th grade and the literacy rate of people aged 15 to 24. "Measuring development progress: A working set of core indicators", www.oecd.org/dac/indicators/htm/list.

[47] The term *déscolarisation* captures the visible phenomenon of diminished school enrolments, associating it with its chain of causation, in which diminished public funding for schools has made them unattractive because of the poor quality of education provided therein, while the lack

of incentives for schooling (civil-service employment) has further diminished the appeal of schooling. In West Africa, this phenomenon was described by Marie-France Lange in *L'école au Togo: Processus de scolarisation et institution de l'école en Afrique*, Éditions Karthala, Paris, 1998, pp. 237-296.

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[49] Jackson, T., *Equal Access to Education: A Peace Imperative for Burundi*, International Alert, London, June 2000, p. 29.

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[51] Preparatory Committee for the Special Session of the General Assembly on Children, Second revised draft outcome document: A world fit for children, Revised draft text submitted by the Bureau of the Preparatory Committee, A/AC.256/CRP.6/Rev.2, 17 May 2001, para. 32.

[52] The Ministry of Education, *The Development of Education: National Report of the Republic of Korea*, Seoul, September 1996, p. 1.

[53] South African Human Rights Commission, "The right to education", Policy Paper No. 2, www.sahrc.org.za.

[54] Economic Commission for Latin America and the Caribbean, *The Equity Gap: Latin America, the Caribbean and the Social Summit*, Santiago de Chile, 1997, p. 116; *Equidad, desarrollo y ciudadanía (Equity, Development and Citizenship)*, Santiago de Chile, 2000, p. 72.

[55] The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour outlaws work likely to harm the health, safety or morals of children, encompassing all children up to the age of 18, and mandates the provision of education to all children removed from the worst forms of child labour. It was adopted on 17 June 1999 and came into force on 19 November 2000. By November 2001, it has been ratified by 108 States (www.ilo.org).

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[57] UNICEF, *Education in Emergencies. A Basic Right ... A Development Necessity*, UNICEF, New York, undated, p. 3.

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[60] International Child Development Centre, Children and Violence, *Innocenti Digest No. 2*, Florence, September 1997, p. 15.

[61] Bonnet, C., *L'enfant cassé*, Albin Michel, Paris, 1999.

[62] Committee on the Rights of the Child, General comment 1 (2001): The aims of education, CRC/GC/2001/1 of 17 April 2001, paras. 2-3.

[63] Final Document of the International Consultative Conference on School Education in Relation with Freedom of Religion and Belief, Tolerance and Non-Discrimination, Madrid, 23-25 November 2001, para. 6 (www.unhchr.ch).

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